

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

**CONTEMPT CASE Nos.753, 754, 756, 763, 764, 765, 767, 768
& 769 OF 2017**

COMMON ORDER:

In Contempt Case Nos.753, 754, 756, 763, 764, 765, 767, 768 & 769 OF 2017, filed under Sections 10 to 12 of Contempt of Courts Act, 1971, the complaint of the petitioners is wilful disobedience of the order, dated 07.01.2016, in W.P.No.19509 of 2010, order, dated 17.12.2015, in W.P.No.9839 of 2010, order, dated 17.12.2015, in W.P.No.17804 of 2010, order, dated 17.12.2015, in W.P.No.12087 of 2010, order, dated 17.12.2015, in W.P.No.17228 of 2010, order, dated 17.12.2015, in W.P.No.7899 of 2010, order, dated 07.01.2016, in W.P.No.17771 of 2010, order, dated 17.12.2015, in W.P.No.12092 of 2010 and order, dated 17.12.2015, in W.P.No.8046 of 2010 respectively.

2. The petitioners in all these cases raised industrial disputes under Section 2A(2) of the Industrial Disputes Act, 1947, questioning the oral terminations and for directions for their reinstatement into service with continuity of service, full back wages and all other attendant benefits. The Industrial Tribunal – cum Labour Court, by way of a common Award, dated 31.01.2009, allowed the said industrial disputes, setting aside the termination orders while directing reinstatement of the workmen with continuity of service, but without back wages and other attendant benefits. The said common award passed by the Industrial Tribunal was assailed in W.P.No.7899 of 2011 and batch and W.P.Nos.19509 of 2010 and 17771 of 2010. This Court dismissed

the said writ petitions, confirming the orders passed by the Tribunal. In the present Contempt Cases, the petitioners herein allege wilful disobedience on the part of the respondents in implementing the orders of this Court.

3. According to the learned counsel for the petitioners, since the award passed by the Tribunal merged in the orders of this Court, the present contempt cases are maintainable before this Court under Sections 10 to 12 of the Contempt of Courts Act. It is the further submission of the learned counsel that despite the orders passed by this Court in writ petitions, confirming the award passed by the Industrial Tribunal, the respondent authorities are not taking any action for giving effect to the orders passed by the Tribunal in the award. In support of his contention as to the maintainability of the present contempt cases, learned counsel for the petitioners places reliance on the judgment of the Gujarat High Court in **Jaisinh Jodhabhai Vaisya and vs. Laxmanbhai Arshibhai Zala¹, Kunha Yammed and others vs. State of Kerala and another², Rama Narang vs. Ramesh Narang and another³ and Income Tax Appellate Tribunal vs. V.K. Agarwal and another⁴.**

4. In the judgment of the Gujarat High Court, the Gujarat High Court held that every High Court under Article 215 of the Constitution of India is a Court of record. In **Kunha Yammed's** case (2 supra), the Hon'ble Supreme Court, while dealing with a

¹ 2001 Criminal Law Journal 2002

² (2000) 6 Supreme Court Cases 359

³ (2006) 11 Supreme Court Cases 114

⁴ (1999) 1 Supreme Court Cases 16

matter under the Kerala Private Forests (Vesting and Assignment) Act, 1971, held at paragraph No.44 as under:

“44. To sum up, our conclusions are:

i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order

refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.”

5. In **Rama Narang’s** case (3 supra), the Hon’ble Apex Court, held at paragraph Nos.29 and 33 as under:

“29. The next decision relied upon by the respondents is the decision of this Court in *Bank of Baroda v. Sadruddin*

*Hasan Daya [(2004) 1 SCC 360]. The petitioner in that case had filed a suit against the respondents for recovery of money. The suit was disposed of by consent and a decree was passed incorporating the consent terms. The consent terms, inter alia, provided for payment of the decretal amount in instalments. Pending the clearance of the decretal amount the respondents undertook not to sell, mortgage, alienate, encumber or charge some of its properties. Another creditor also filed the suit against the respondent for recovery of a certain amount. This second suit was also disposed of by consent and a decree passed in terms of the consent order. Like the first decree the decreed amount was to be satisfied in instalments and pending satisfaction of the decree, the respondents undertook to the Court not to alienate, encumber or create third-party rights or part with possession of the same properties which had already formed part of the undertaking in the first decree. The respondents defaulted in making payment of the instalments under the first decree. The petitioner put the decree into execution. It also filed a contempt petition alleging that the second consent decree violated the undertaking given in the first decree. The Court found that by placing the same **property** under attachment in the second decree the respondent had intentionally and deliberately acted in breach of the undertaking given to the Court in the first consent decree. The Court approved the statement of the law by the Bombay High Court in *Bajranglal Gangadhar Khemka v. Kapurchand Ltd* [AIR 1950 Bom 336 : 52 Bom LR 363]. Significantly, the Court also said : (SCC p.371, para 14)*

“The violation or breach of the undertaking which became part of the decree of the court certainly amounts to contempt of court, irrespective of the fact that it is open to the decree-holder to execute the decree”.

33. In the present case, the consent terms arrived at between the parties were incorporated in the orders passed by the Court on 12.12.2001 and 8.1.2002. The decree as drawn up shows that order dated 8.1.2002 was

to be “punctually observed and carried into execution by all concerned”. A violation of the terms of the consent order would amount to a violation of the Court’s orders dated 12.12.2001 and 8.1.2002 and, therefore, be punishable under the first limb of Section 2(b) of the Contempt of Courts Act, 1971. The question whether the respondents should not be held guilty of contempt because of any earlier confusion in the law reflected in Babu Ram Gupta case [(1980) 3 SCC 47 : 1980 SCC (Cri) 527] is a question which must be left for decision while disposing of the contempt petition on merits. It may be argued as an extenuating or mitigating factor once the respondents are held guilty of contempt. The submission does not pertain to the maintainability of the petition for contempt. The preliminary objection raised by the respondents regarding the non-maintainability of the petition for contempt is, for the reasons stated, dismissed.”

6. In **Income Tax Appellate Tribunal’s** case (4 supra), it is held at paragraph Nos.10, 11, 12 and 15 as under:

“10. Before examining the conduct of the first respondent, we would like to deal with the technical objections which were raised before us on behalf of the first respondent. The first respondent had initially contended that the Income Tax Appellate Tribunal was not a Court, and was also not a court subordinate to the Supreme Court. Hence the Supreme Court had no jurisdiction to issue a suo motu notice of contempt in respect of a matter pertaining to the Income Tax Appellate Tribunal. However, subsequently, learned Senior Counsel for the first respondent conceded that the Income Tax Appellate Tribunal did perform judicial functions and was a court subordinate to the High Court. Hence, there is no need to examine any further, the contention that the said Tribunal is not a Court.

11. Article 129 of the Constitution provides that the Supreme Court shall be a court of record and shall have

all the powers of such a court including the power to punish for contempt of itself. This Article has come up for consideration on numerous occasions. This Court has consistently held that the Supreme Court has power under this Article to punish, not merely for contempt of itself, but also for contempt of all courts and tribunals subordinate to it. In the case of Delhi Judicial Service Assn. v. State of Gujarat [(1991)4 SCC 406 : (1991) 3 SCR 936] this Court examined at length the power of this Court under Article 129 to punish for contempt. This Court first examined the jurisdiction of the Supreme Court and held : (SCR p.970 : SCC p.437, para 18)

“There is, therefore, no room for any doubt that this Court has wide power to interfere and correct the judgment and others passed by any court or tribunal in the country. In addition to the appellate power, the Court has special residuary power to entertain appeal against any order of any court in the country. The plenary jurisdiction of this Court to grant leave and hear appeals against any order of a court or tribunal, confers power of judicial superintendence over all the courts and tribunals in the territory of India including subordinate courts of Magistrate and District Judge. This Court has, therefore, supervisory jurisdiction over all courts in India.”

Examining the powers of a court of record, it came to the conclusion that a court of record has inherent power to punish for contempt of all courts and tribunals subordinate to it in order to protect these subordinate courts and tribunals. This power to protect is founded on the inherent power of a court of record to correct the judicial orders of subordinate courts. This Court further observed : (SCR pp.976-977, 979 : SCC pp. 442-43, 445-46, paras 26 & 29)

“The Supreme Court being a court of record under Article 129 and having wide power of judicial supervision over all the courts in the country, must possess and exercise similar jurisdiction and power as the High Courts had

prior to contempt legislation in 1926. Inherent powers of a superior court of record have remained unaffected even after codification of contempt law.

Article 129 declares the Supreme Court a court of record and it further provides that the Supreme Court shall have all the powers of such a court including the power to punish for contempt of itself. (emphasis supplied) The expression used in Article 129 is not restrictive, instead it is extensive in nature. If the framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity for inserting the expression 'including the power to punish for contempt of itself'. The Article confers power on the Supreme Court to punish for contempt of itself and in addition, it confers some additional power relating to contempt as would appear from the expression 'including'. The expression 'including' has been interpreted by courts to extend and widen the scope of the power. The plain language of Article 129 clearly indicates that this Court as a court of record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a court of record. In interpreting the Constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The courts ought not to accept any such construction. While construing Article 129, it is not permissible to ignore the significance and impact of the inclusive power conferred on the Supreme Court. Since the Supreme Court is designed by the Constitution as a court of record and as the Founding Fathers were aware that a superior court of record had inherent power to indict a person for the contempt of itself as well as of courts inferior to it, the expression 'including' was deliberately inserted in the article. Article 129 recognised the existing inherent power of a court of record in its full plenitude including the power to punish for the contempt of inferior courts."

12. *This view was reiterated and reaffirmed in the case of Vinay Chandra Mishra, In re [(1995) 2 SCC 584] where this Court affirmed the decision in Delhi Judicial Service Assn. v. State of Gujarat [(1991) 4 SCC 406 : (1991) 3 SCR 936]. After quoting extensively from the said judgment, this Court held that since this Court has the power of judicial superintendence and control over all the courts and tribunals functioning in the country, it has a corresponding duty to protect and safeguard the interests of inferior courts to ensure that the flow of the stream of justice in the courts remains unsullied by any interference or attack from any quarter. The amplitude of the power of this Court cannot be curtailed by a law made by the Central or a State Legislature. This Court's jurisdiction and power to take action for contempt of subordinate courts is its inherent jurisdiction, and is protected under Article 129. Although the judgment in Vinay Chandra Mishra, In re [(1995) 2 SCC 584] has been partially set aside in Supreme Court Bar Assn. v. Union of India [(1998) 4 SCC 409] on the question of power to suspend an advocate's licence under contempt jurisdiction, this part of its basic reasoning is unaffected. In fact, it is reaffirmed. There can, therefore, be no doubt that this Court has jurisdiction to punish for contempt of the Income Tax appellate Tribunal.*

15. *Whenever an Act adversely affects the administration of justice or tends to impede its course, or shake public confidence in a judicial institution, the power can be exercised to uphold the dignity of the court of law and protect its proper functioning. It is in the light of these principles that one has to examine Section 2(c) of the Contempt of Courts Act, 1971. Section 2(c) is as follows:*

“2. (c) ‘criminal contempt’ means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which –

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;”

The definition of criminal contempt under Section 2(c), therefore, refers not merely to publication by words, signs etc. but includes the doing of any act whatsoever which scandalises or tends to scandalise or lowers or tends to lower the authority of any court [Section 2(c)(i)] or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any manner [Section 2(c)(iii)]. Therefore, any act which tends to interfere with the administration of justice or tends to lower the authority of any court can be punished with contempt.”

7. The Government of Andhra Pradesh, *vide* Act 32 of 1987, inserted Section 11B to the Industrial Disputes Act, 1947. The said provision came into force with effect from 22.07.1987. The said provision of law reads as under:

“The Labour Court or the Tribunal shall have power of the Civil Court to execute its award or any settlement as a decree of a civil Court.”

It is very much evident from a reading of the above provision of law that an award passed by the Industrial Tribunal is executable as if the same is a decree of a civil Court. Therefore, all the modes available for execution of the decree are equally applicable to the execution of the awards also. In this context, it may be appropriate to refer to the judgment of the Hon’ble Apex Court in

R.N. Dey and others vs. Bhagyabati Pramanik and others⁵

wherein it is held at para Nos.7 and 8 as under:

“7. We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court’s dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no wilful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.

8. Further, the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree. In land acquisition cases when a decree is passed the State is in the position of a judgment-debtor and hence the court should not normally lend help to a party who refuses to take

⁵ (2000) 4 Supreme Court Cases 400

legally-provided steps for executing the decree. At any rate, the court should be slow to haul up officers of the Government for contempt for non-satisfaction of such money decree.”

8. Admittedly, in the present cases, without filing execution applications as per the provision of Section 11B of the Industrial Disputes Act, the present contempt cases are directly filed before this Court. There is absolutely no dispute with regard to the principles laid down in the judgments relied upon by the learned counsel for the petitioners on the issue of doctrine of merger. The judgment reported in **Rama Narang**'s case (3 supra) would not render assistance to the petitioners herein, as admittedly in the said case, the concerned terms arrived at between the parties were incorporated in the orders passed by the Hon'ble Supreme Court. In the instant case, no such contingency does exist. Hence, the said judgment has no application.

9. The judgments of the Hon'ble Apex Court reported in **Kunha Yammed**'s case (2 supra) and **Income Tax Appellate Tribunal**'s case (4 supra) would not render any assistance to the petitioners herein having regard to the facts and circumstances of the case and in view of the provision of Section 11B of the Industrial Disputes Act.

10. In view of the provision of Section 11B of the Industrial Disputes Act and as the petitioners herein did not avail the said remedy, this Court is of the considered opinion that the present contempt cases cannot be entertained under Sections 10 to 12 of the Contempt of Courts Act.

11. For the aforesaid reasons and in view of the law laid down in **R.N. Dey's** case (5 supra), all these Contempt Cases are dismissed. However, it is open for the petitioners herein to avail the remedy of execution, as provided under Section 11B of the Industrial Disputes Act. There shall be no order as to costs.

12. Miscellaneous applications pending, if any, in these Contempt Cases shall stand closed.

JUSTICE A.V.SESHA SAI

Date : 17.11.2017
AMD



THE HONOURABLE SRI JUSTICE A.V.SESHA SAI



**C.C.Nos.753, 754, 756, 763, 764, 765, 767, 768 & 769 OF
2017**

Date: 17.11.2017

AMD